No. 75-1877

In the

Supreme Court of the United States

OCTOBER TERM, 1975

Clyde E. Skeen et ux,

Petitioner,

v.

Valley Bank of Nevada,

Respondent.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals
for the Fifth Circuit

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To the Honorable the Chief Justice of the
United States and the Associate Justices
of the Supreme Court of the United States:

Petitioners, Clyde E. Skeen and wife, Helen M. Skeen, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for

the Fifth Circuit, entered in the above entitled case on April 30, 1976.

I.

REPORT OF THE OPINION OF THE COURT BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, printed in Appendix A hereto, infra, page A-1, is not officially reported, being a summary affirmance of the District Court's Memorandum Opinion and Order printed in Appendix B hereto, infra, page A-2, and reported at 401 F.Supp. 139 (D.C. Tex.1975).

II.

GROUNDS ON WHICH JURISDICTION IS INVOKED

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 30, 1976. (Appendix A, infra, page A-1). The jurisdiction of this Court is invoked under 28 U.S.C.,

Section 1254(1).

III.

QUESTION PRESENTED

Whether a Court of Appeals may, in arriving at a decision on a case, under its appellate jurisdiction by virtue of diversity of citizenship of the parties, apply substantive law which is in direct conflict with the law of the state from which the case was appealed as set forth by the highest court of the state?

IV.

STATUTES INVOLVED

The statutory provision involved in this case is the Rules of Decision Act, 28 U.S.C., Section 1652, which reads as follows:

> "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require

or provide, shall be regarded as rules of decision in civil actions in the Courts of the United States, in cases where they apply."

V.

STATEMENT OF THE CASE

1. The Nature of the Proceedings.

This is a suit brought in Texas by Respondent to foreclose a judgment lien upon property which Petitioners claim as their home and homestead. The jurisdiction of the District Court for the Northern District of Texas was invoked because of diversity of citizenship; Respondent being a corporation duly organized under the laws of Nevada, and Petitioners being citizens of Texas. A judgment was entered by the District Court(R.42-45 Appendix B, infra, page A-2), directing a payment of a specified amount of money or foreclosure and sale of the property with a division

of the proceeds between Petitioners and Respondents. Petitioners duly prosecuted an appeal to the Court of Appeals for the Fifth Circuit, where the District's Court's judgment was summarily affirmed. (Appendix A, page A-1).

2. The Relevant Facts.

Respondent is the owner and holder of a judgment against Petitioner, Clyde E. Skeen, (founded upon a Nevada judgment against him based upon a guaranty dated September 8, 1971, made by him of a $400,000.00 corporate promissory note) rendered on December 7, 1973, in Civil Action No. CA3-5996-D in the United States District Court for the Northern District of Texas, Dallas Division, in the amount of $470,308.33 with interest at the rate of 12% per annum on the sum of $400,000.00, from the 15th day of May, 1972, (R. 7-8,17,

Appendix C, infra, page A-6). Said judgment was duly recorded in the judgment records of Dallas, Dallas County, Texas, in Volume 74053, at page 1645, and properly indexed. (R. 12-14). At the time, Petitioner signed the guaranty on the promissory note, the Texas homestead exemption was $10,000.00. (Appendix D, infra, page A-8).

Petitioners are living on the property described in the original petition in their home, having lived there and designated it as their homestead since 1960. (R. 8). The real estate in question, without any improvements thereon, at the time it was designated as a homestead had a value of $13,000.00 (R. 18). The Texas homestead exemption at that time was $5,000.00. (Appendix D, infra, page A-8).

On April 15, 1974, Respondent filed Civil Action No. CA3-74-330-D, in the

instant case, requesting the foreclosure of its judgment lien against Petitioners' homestead and the forced sale of their homestead plus recovery of all costs. (R. 1, 2)

On September 24, 1975, after the District Court had received stipulations and briefs from the parties on the issues involved in the case, a judgment was entered against Petitioners, ordering them to pay 8/13ths of $40,000.00 or $24,615.38, having found the applicable exemption to be $5,000.00, within 60 days of said judgment entry, with the proviso that if the judgment were not paid within that time, the Court would order a forced sale of Petitioner's homestead and division of the proceeds. (R. 42-45, Appendix B, infra, page A-2). From such judgment, Petitioners appealed to the Court of

Appeals for the Fifth Circuit, where the District Court's judgment was affirmed. (Appendix A, infra, page A-1).

VI.

REASONS FOR GRANTING THE WRIT

1. THE DECISION OF THE COURT OF APPEALS IS NOT IN ACCORD WITH THE APPLICABLE DECISION OF THE SUPREME COURT OF THE STATE OF TEXAS.

In the District Court, Petitioners and Respondent disputed the applicable homestead exemption to be allowed the Petitioners. That is, Petitioners alleged the appropriate exemption was $10,000.00 value on an urban homestead without regard to improvements thereon, as mandated by Article XVI, Section 51, of the Constitution of the State of Texas, (1876) as amended by referendum on November 3, 1970, (Appendix D, infra, page A-8), which was in effect

when Petitioner, Clyde E. Skeen guaranteed the promissory note. Respondent, however, alleged the applicable exemption was $5,000 value on an urban homestead without regard to improvements, as stated in Article XVI, Section 51, of the Constitution of the State of Texas (1876) (Appendix D, infra, page A-8) prior to its increase to $10,000 by amendment, and in effect when Petitioners established their homestead.

Since the excess value of the urban homestead over the exemption value is subject to creditors' liens and the homestead, if not partitionable in kind, can be sold to extract the excess, the applicable exemption became important in determining the indivisible interest representing the homestead value. Petitioners maintained the homestead exemption was a 10/13ths indivisible interest (meaning the $10,000.00

exemption in effect when Skeen guaranteed the note) upon the $13,000.00 value of the lot at the time of designation, while Respondent maintained the exemption was only a 5/13ths indivisible interest based upon the $5,000.00 homestead exemption. As the parties had stipulated a present value of $40,000.00 for the unimproved property, the applicable constitutional exemption to be determined is whether Petitioners were entitled to 10/13ths or 5/13ths of $40,000.00, as their exemption homestead interest.

The Court of Appeals based its affirmance on the District Court's opinion that:

> "The Defendants' proposed rule would introduce complications and anomalies into the determination of homestead rights. If the Court were to accept the Defendants' proposed construction, all homestead disputes would require a judicial determination of when the obligation arose, a sometime difficult and time-consuming determination." (R. 44, Appendix B, infra, page A-4).

This is in direct conflict with the law of the State of Texas as set forth by the Supreme Court of Texas in the case of Grayson v. Taylor, 14 Tex. 672 (1885), which held that when the legislature and the citizens of Texas constitutionally change the law relating to homestead, the exemption amount is to be determined by the law that was in effect at the time the obligation arose.

Since the Court of Appeals did not follow the law of the State of Texas, a typical situation is presented in which this Honorable Court has on a number of occasions granted Writs of Certiorari. Erie R. Co. v. Tompkins, 304 U.S. 64; Russell v. Todd, 209 U.S. 280; Wichita Royalty Co. v. City National Bank, 306 U.S. 103. See also Rules of Decision Act, 28 U.S.C., Section 1652.

2. THE QUESTION HERE PRESENTED HAS GREAT IMPORTANCE AND FAR REACHING EFFECTS.

Not only in the State of Texas, but in many other jurisdictions, millions of families are protected from losing their homes to creditors by the various homestead acts of their states of citizenship. Of these, a great number will suffer financial set backs, bankruptcy, and judgment indebtedness to creditors. These families protected from loss of their homes to creditors seeking to foreclose judgment liens, as determined in accordance with the substantive law of the state in which they make their homestead, should not be subjected to the caprice of a Court of Appeals in connection with which the Court of Appeals is allowed to apply whatever rule it sees fit, regardless of the rule of the State forum, in determining the homestead exemptions allowed.

This is particularly true at present in the State of Texas if the decision of the Court of Appeals is allowed to stand (which could potentially apply to every homestead in Texas). If a family is sued for foreclosure of a judgment lien on the homestead by a foreign judgment creditor, being individual, firm, or corporation, then the extent of the homestead exemption of the family will be determined by one set of rules as decreed by the Court of Appeals, whereas if the foreclosure and forced sale were sought by a Texas judgment creditor, the homestead exemption would be determined by still another set of rules as decreed by the Supreme Court of the State of Texas. Already the decision of the District Court, affirmed by the Court of Appeals, is being cited and followed as the law. See Abramson v.

Bobbitt, Bankruptcy No. 3-74-373-F, (D.C. Tex. March 20, 1976).

This decision is of such great importance that it should not be allowed to stand.

CONCLUSION

For the foregoing reasons, this Petition For Writ of Certiorari should be granted.

Respectfully submitted,

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Petitioner.

Appendix "A"

A-1

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75-3950
Summary Calendar

VALLEY BANK OF NEVADA,

Plaintiff-Appellee,

versus

CLYDE E. SKEEN, and wife,
HELEN M. SKEEN,

Defendants-Appellants.

Appeal From The United States District Court
For The
Northern District of Texas

April 30, 1976

Before COLEMAN, GOLDBERG and GEE,
Circuit Judges.

PER CURIAM:

Affirmed. See Local Rule 21.
Costs are taxed against defendants-appellants.

Appendix "B"

A-2

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NO. CA-3-74-330-D

VALLEY BANK OF NEVADA,

Plaintiff,

versus

CLYDE E. SKEEN, and wife,
HELEN M. SKEEN,

Defendants.

MEMORANDUM OPINION AND ORDER

September 24, 1975

Came on for consideration before the Honorable Robert M. Hill, United States District Judge, this action to enforce a judgment Valley Bank of Nevada, plaintiff, obtained against Clyde E. Skeen, and wife, Helen M. Skeen, defendants, in this court on December 7, 1973. The parties have submitted the case to the court on the basis of stipulated facts and briefs. The questions presented concern the application of the Texas Homestead law. The parties have stipulated that prior to the entry of the judgment in favor of the plaintiff the defendants had designated certain real property they owned as their homestead and at the time of such designation the property, without improvements, had a value of $13,000.00 and at the present

time the property, without improvements, has a value of $40,000.00

The first question presented is the proper formula to be applied to determine the portion of the property that is not protected by the Texas Homestead provisions. The parties have agreed that the formula should be

$$\frac{\text{Excess amount over the exemption}}{\text{Value at time property was designated homestead}} \times \text{Present Value}$$

The parties disagree only as to the applicable statutory exemption.

The statutory exemption at the time the homestead was designated was $5,000. In 1970, however, the exemption was raised to $10,000. Texas voters finalized enactment of the exemption just one month before plaintiff obtained the judgment upon which it sues in this case. The plaintiff urges that the proper figure is the $5,000 exemption in effect when the homestead was designated and that it is entitled to recover 8/13 of the present value of the property. Defendants urge the $10,000 exemption in effect when the judgment arose in this case is the proper figure and that plaintiff is entitled to recover only 3/13 of the present value of the property. The court is of the opinion that the $5,000 figure which was the exemption in effect when this property was designated a homestead must govern.

The only authority brought to the court's attention concerning this question is Linch, et al v. Broad, et al, 6 S.W. 751(Tex.1888). The Supreme Court there affirmed the lower court's determination that the statutory exemption at the time of homestead designation controlled. The homestead designation had been made in 1859 at a time when the

appellants' property was worth $4,000 and the exemption was $2,000. In 1876 the exemption was raised to $5,000 at the time the value of the property approached $20,000. The court refused to apply the $5,000 exemption to the earlier valuation. The court reasoned "The provision of the present constitution enlarging the homestead exemption cannot be given a retroactive application . . . so as to embrace in 1877 all property which in 1859 did not exceed in value the enlarged exemption prescribed by the constitution of 1876, without regard to value in 1877."

The defendants admit that the statute cannot be construed so as to have a retrospective effect; however, they fall back on the argument that there is no such effect if the obligation arose after the statutory change. The defendants' proposed rule would introduce complications and anomalies into the determination of homestead rights. If the court were to accept the defendants' proposed construction, all homestead disputes would require a judicial determination of when the obligation arose, a sometime difficult and time-consuming determination. Also, the anomalous situation would arise in which the homestead was subject to some claims but not others, depending upon when this claim arose. The court finds no evidence the legislature intended such a rule. If the court were to determine the ratio on the basis of the statutory figure in existence at the time the obligation arose, it would seem appropriate to also consider the value of the property as of that time.

The second issue presented to the court is the proper procedure for allowing the plaintiff to recover the excess value over the homestead protection. The defendants argue that the court can order only a sale of an undivided interest in the property. Although the courts favor allowing a defendant to pay the excess value without resorting to sale of the entire property and division of the proceeds, (Love v. Hoffman, 494 S.W.2d 591(Tex.Civ. App. Dallas 1973), the court is empowered to order the latter procedure if a defendant is unable to make up the deficiency. Whitman v. Burkey, 282 S.W. 798 (Tex.1926).

It is therefore, ORDERED, ADJUDGED that plaintiff Valley Bank of Nevada recover of the defendants Clyde E. Skeen and Helen M. Skeen 8/13 of $40,000 or $24,615.38, to be paid within sixty (60) days of this order, plus legal interest and costs of action. If this amount is not paid within this time the court will order a sale of the property and an appropriate division of the proceeds.

Dated this 24th day of September, 1975.

/s/ Robert M. Hill
United States District
Judge

Appendix "C"

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NO. CA-3-5996-D

VALLEY BANK OF NEVADA,

Plaintiff,

versus

CLYDE E. SKEEN,

Defendant.

JUDGMENT

December 7, 1973

This matter having been considered by the Court on motion of the Plaintiff, Valley Bank of Nevada, for a summary judgment in this action against the Defendant, Clyde E. Skeen, pursuant to Rule 56 of the Federal Rules of Civil Procedure; and the Court being of the opinion that no genuine issue as to any material fact exists and that Plaintiff is entitled to judgment as a matter of law upon the whole case;

IT IS ACCORDINGLY ORDERED, ADJUDGED and DECREED that Plaintiff, Valley Bank of Nevada, have and recover of and from Defendant, Clyde E. Skeen, the sum of $470,308.33, plus interest at the rate of 12% per annum on $400,000.00 from and after May 15, 1972 until paid; plus costs

of Court; all for which let execution issue.

DATED: December 7, 1973.

/s/ Robert M. Hill
J U D G E
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
TEXAS, Dallas Division

CONSTITUTION, STATUTE AND RULE

CONSTITUTION

Constitution of the State of Texas (1876) Article XVI, Section 51 (Prior to 1970 Amendment.)

Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town, or village, shall consist of lot, or lots, not to exceed in value five thousand dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purpose of a home, or as a place to exercise the calling or business of the head of a family; provided, also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been accrued.

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Constitution of the State of Texas (1876) Article XVI, Section 51, (as amended):

Sec. 51. Amount and value of homestead; uses

Sec. 51. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city,

town or village, shall consist of lot, or lots, not to exceed in value Ten Thousand Dollars, at the time of their designation as the homestead, without reference to the value of any improvements thereon; provided, that the same shall be used for the purposes of a home, or as a place to exercise the calling or business of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired. This amendment shall become effective upon its adoption. Adopted Nov. 3, 1970; Nov. 6, 1973.